

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether (“MTBE”)
Products Liability Litigation

This Document Relates To:
Commonwealth of Puerto Rico, et al. v.
Shell Oil Co., et al., No. 07 Civ. 10470

**Master File No. 1:00 – 1898
MDL 1358 (SAS)
M21-88**

**DECLARATION OF
KEVIN WILSON**

I, KEVIN WILSON, declare as follows:

1. My name is Kevin Wilson. I am over the age of twenty-one, reside in Houston, Texas, and am competent to give testimony. The facts set forth in this declaration are based upon my personal knowledge, the records of Tauber Oil Company (“Tauber”), and information collected and made available to me by knowledgeable employees of Tauber.
2. I am currently employed as Vice President at Tauber and have worked at Tauber since 1992.
3. I am knowledgeable concerning the current and historic business operations and organizational structure of Tauber.
4. Tauber is a Texas company, incorporated and registered in Texas.
5. Tauber principal place of business is in Texas.
6. Tauber has never manufactured, marketed, traded, stored, sold or otherwise handled finished gasoline, gasoline containing MTBE, or MTBE in Puerto Rico.
7. Tauber its distributors, and agents have never solicited, advertised or marketed the sale of gasoline or MTBE in Puerto Rico and have never taken any actions to create a market for gasoline or MTBE in Puerto Rico.

8. Tauber does not have a distribution agreement with any person, company, or agent to distribute gasoline containing MTBE, or MTBE in Puerto Rico.

9. Tauber has never entered into a distribution agreement with a person, company, or agent to solicit, advertise, market, or sell MTBE or gasoline containing MTBE in Puerto Rico.

10. Tauber never designed MTBE, gasoline containing MTBE, or any product to be specifically used in Puerto Rico. Tauber has never had any of its officers, directors, employees or agents travel to Puerto Rico for any business-related purpose or activity.

11. Tauber has never filed, and is not required to file, any tax returns in Puerto Rico and has never paid taxes in Puerto Rico.

12. Tauber owns no real or personal property located in Puerto Rico.

13. Tauber has never leased real or personal property in Puerto Rico.

14. Tauber has never maintained, controlled, leased, or operated storage tanks, pipelines, or service stations in Puerto Rico.

15. Tauber has never maintained a place of business or office in Puerto Rico and employs no agents or employees in Puerto Rico.

16. Tauber has never had any officers, directors, employees or agents acting on its behalf present in Puerto Rico, including any agent for service of process in Puerto Rico.

17. Tauber has never had a bank account, phone number, fax number, or any corporate records located in Puerto Rico.

18. Tauber has not initiated litigation in Puerto Rico.

19. Tauber has not engaged in any commercial activity to purposefully avail itself of the protections of the laws of Puerto Rico and has not engaged in conduct purposefully directed at Puerto Rico.

20. Tauber has not delivered its goods, including MTBE, in the stream of commerce with the expectation that they would be purchased by Puerto Rico users.

21. Tauber has not participated in any conventions, meetings or sales events in Puerto Rico or engaged in conduct “targeting” Puerto Rico for its products.

22. Tauber does not have a single contact with Puerto Rico.

23. Tauber’s website did not promote the sale of MTBE or gasoline containing MTBE in Puerto Rico. Tauber’s website is in English and is not translated to Spanish or otherwise targeted to customers in Puerto Rico.

24. Tauber has never refined and/or manufactured petroleum products, including, but not limited to, gasoline, gasoline containing MTBE, and MTBE.

25. Tauber has never sold or distributed MTBE or gasoline containing MTBE at any station, port, or any other location in the Commonwealth of Puerto Rico.

26. Tauber has never blended finished gasoline or added chemicals such as MTBE to gasoline for shipment or sale in Puerto Rico.

27. Tauber has not traded gasoline for sale in Puerto Rico.

28. Tauber has not traded gasoline containing MTBE for sale in Puerto Rico.

29. Tauber has reviewed its records and hereby states that Tauber sold MTBE to Phillips Petroleum Company (“PPC”) and the following related divisions, Phillips 66 Co. (“Phillips 66”) and Phillips Chemical Co. (“PCC”).

30. Tauber sold MTBE to PPC, PCC and Phillips 66 through what are referred to as "spot sales."¹

31. Other than the listed Phillips entities, Tauber has located no records concerning any other party to Commonwealth's Third Amended Complaint in action 07-cv-10470 or the First Amended Complaint in action 14-cv-1014 indicating that such party purchased MTBE from Tauber and that such MTBE was shipped to Puerto Rico.

32. Upon information and belief, no Phillips entity (PPC, PCC or Phillips 66) to which Tauber sold and delivered title to MTBE was or is located in Puerto Rico.

33. Tauber has reviewed its records and identifies the following sales of MTBE to Phillips free on board (FOB) Houston²:

Date	# of bbl ³	Phillips Entity
Aug. 8, 1985	50,000	PPC
Feb. 10, 1994	40,000	Phillips 66
Mar. 18, 1994	41,375	Phillips 66
Aug. 8, 1994	52,138 ⁴	Phillips 66
Mar. 22, 1995	20,011	PCC
Oct. 24, 1995	52,595	PCC (see fn 2)
Jan. 27, 1997	54,905	PCC
Aug. 27, 1997	54,958	PCC
Sept. 18, 1997	54,012	PCC
Oct. 22, 1997	30,002	PCC

34. The above listed sales of MTBE constitute all known sales of MTBE by Tauber to Phillips.

¹ A spot sale is a term to distinguish the sale from other sales such as those under a supply agreement. A spot sale is a stand-alone agreement for a purchase of a specified quantity "on the spot" typically reflecting the current market price of the commodity. Supply agreements differ from spot sales in that a contract under a supply agreement usually runs for more than a year and will cover all of the purchaser's requirements for that product during that period.

² The agreement for the October 24, 1995 sale with Phillips Chemical Company provided for title to transfer in Jose, Venezuela to PCC and, at PCC's instruction, to be shipped to "Guayama, Puerto Rico" with terms CIF (which remained the responsibility of Tauber's seller, EcoFuel).

³ The sales acknowledgment for the Aug. 8, 1985 transaction listed the amount sold in barrels. All remaining sales were invoiced in gallons, but have been converted to barrels for purposes of this declaration.

⁴ This sale was subject to an agreement for three shipments but delivery and invoice records reflect only one delivery.

35. Tauber is a trader of energy products and the total volume of spot sales by Tauber to PPC, Phillips 66 and PCC represent a negligible percentage by volume of petrochemicals sold by Tauber during the relevant time period.

36. Tauber had no involvement in any decision by any Phillips entity to use MTBE, including that it did not provide any economic analysis of MTBE versus any other oxygenate to substitute for lead.

37. Tauber has no distribution or agency agreement with any Phillips entity.

38. Tauber had no discussions with any Phillips entity concerning any purported economic “advantage” to using MTBE over any other alternative.

39. Tauber did not market or sell TBA to Phillips or any other party for delivery or use in Puerto Rico.

40. Tauber provided no information nor has it ever been provided information concerning gasoline capacity or MTBE supply or demand for any Phillips entity and specifically for the Phillips Core facility.

41. PPC, PCC and Phillips 66 took delivery at locations outside of Puerto Rico in each of the above-referenced sales of MTBE by Tauber.

42. The price for any MTBE was not contingent on MTBE being shipped to Puerto Rico.

43. Based on materials provided by counsel, various Phillips related entities provided discovery responses purporting to identify the entities that “supplied MTBE to the Core facility” and some of those Phillips entities identified Tauber for the time period 1982-1989.

44. Based upon a review of Tauber’s records, and as confirmed at my deposition on behalf of Tauber in this matter, no sale was ever made by Tauber to Phillips Puerto Rico

Core, Inc. or any entity in Puerto Rico. All sales were between Tauber and PPC, PCC or Phillips 66, all located in Bartlesville, Oklahoma, and title transferred in all FOB outside of Puerto Rico.

45. To the extent that MTBE sold by Tauber to Phillips was subsequently sold and delivered to Puerto Rico, Tauber is in possession of no information, documents or other evidence establishing or in any manner inferring that any MTBE sold by Tauber was blended into gasoline that was sold for use Puerto Rico.

46. I do not believe there is any one person who is knowledgeable of all of the matters stated in this declaration. Accordingly, this declaration was prepared with the assistance and advice of representative of Tauber and counsel for Tauber.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: February 26, 2014



KEVIN WILSON